

Blue Ribbon Advisory Panel

-Meeting Minutes-

January 23, 1997

Northwestern Indiana Regional Planning Commission Building

6100 Southport Road

Portage, Indiana 46368

The Blue Ribbon Advisory Panel held its third meeting on January 23, 1997. The Panel was constituted to consider issues associated with the Lake Michigan coastal area raised by public work groups held in the spring of 1995, as well as additional issues of interest to the Panel. The meeting began at approximately 9:05 a.m., CST.

Andrea Gromeaux reintroduced herself as facilitator and asked the Panel members and guests to introduce themselves. The following Panel members were present:

Tom Anderson, Save the Dunes Council
Robert Bilheimer, Bethlehem Steel
Michael Bucko, Porter County Council
Julie Murphy, Amoco Oil Company
Robert Pastrick, Mayor of East Chicago
Chuck Siar, Chair of the Natural Resources, Shorelines, and Water Quality Public Workgroup
J.B. Smith, Chair of the Marina, Public Access, and Recreational Uses Workgroup
Bill Theis, Private Property Rights and Pine Township Trustee
Don Thomas, Chair of the Residential, Agriculture, and Commercial Development Workgroup

Others present at the meeting included:

Shiv Baloo, Amoco Oil Company
Charlotte Read, Save the Dunes Council
Andrea Gromeaux, Facilitator, Department of Natural Resources
Dawn Deady, IDNR, Lake Michigan Coastal Coordination Program
Stephen Lucas, Natural Resources Commission, Hearings
James Hebenstreit, IDNR, Division of Water
Marty Maupin, IDEM, Office of Water Management
Tony Arvay, Sport Fishing Organizations
Tug Frum, Marina Operator
James Ranfranz, Northwestern Indiana Regional Planning Commission
Barbara Waxman, Northwestern Indiana Regional Planning Commission

Gromeaux asked if there were any amendments to the Meeting Summary of November 14, 1996. None were offered. The summary was then approved as written.

Gromeaux asked if there were amendments to the agenda. None were suggested.

Gromeaux then reviewed the mission statement and basic roles of the participants for the facilitated session. She affirmed that the "ground rules" developed during the October meeting had worked to the satisfaction of the members and would again be applied. She then provided the floor to James Hebenstreit to provide an overview of a recent DNR meeting with the Detroit District of the U.S. Army Corps of Engineers.

November 1996 Meeting with Detroit District, Army Corps of Engineers
Hebenstreit provided a brief review of a meeting in November with the Detroit District of the Army Corps. He said Gary Manesto, Bob Tucker, and John Konik came to Indianapolis from the Corps. In addition to himself and Steve Lucas, Deputy Director David Herbst, Director of the Division of Fish and Wildlife Gary Doxtater, Director of the Division of Water John Simpson, and Assistant Director for the Division of Water Michael Neyer were present. Others from the DNR also attended.

Hebenstreit said the meeting was a good first step to improving communications, but discussions as to future opportunities for coordination showed there was much yet to be accomplished. The Corps expressed some interest in joint inspections but not in having IDNR or IDEM professionals perform inspections on behalf of the Detroit District. There were discussions of Programmatic General Permits, of primacy in Michigan and its potential in Indiana, of the benefits of federal consistency under CZM, and other streamlining techniques. The Detroit District promised to provide a final document for Programmatic General Permits, when the document is available. Hebenstreit also indicated there were discussions of the Corps field office in South Bend and the possibility it might receive an additional staff member.

Chuck Siar noted that if an applicant disagreed with a Corps comment on an application, the applicant apparently had no option but to conform to the comment. A question was asked as to whether an applicant or another interested person could seek administrative review of a Corps decision. Hebenstreit responded that this issue had been discussed with the Detroit District during the November meeting. Gary Manesto then said that, in response to criticisms from the U.S. House, the Corps did consider establishing a review process with administrative law judges, but the plan was not being actively pursued. Hebenstreit said his understanding was that the only remedy available to appeal a decision by the Corps was to file suit in a Federal Court. He said this differed in

Indiana, where both IDEM and IDNR had simplified review proceedings presided over by administrative law judges.

Review of Information Requested by Panel

Steve Lucas briefly outlined the potential for primacy within the Underground Injection Control Program. He said that primacy would have significance in Indiana mostly for Class I wells and Class V wells. There are very few Class I wells, but estimates are that there are approximately 10,000 Class V wells in the state. Currently, these wells are regulated by the E.P.A. from Region 5 in Chicago. Since there is not a corresponding state program, the issue is largely one of water quality, and whether the federal program is serving state environmental needs, rather than one of duplication in permitting.

Bill Theis asked whether primacy was a bad idea. He referred to the letter from Tim Method, Deputy Commissioner at IDEM, which noted there were only two Class I wells in Northwest Indiana and that regulation of Class V wells would be expensive.

Lucas responded that his review pertained only to the UIC program. He appreciated the extensive comments from Tim Method but would not personally express an opinion regarding the value of primacy in the context of Underground Injection Control.

Dawn Deady then spoke to examples of joint permit applications for other states. She reviewed arrangements applied in several other states, including Washington, Pennsylvania, Michigan, and Wisconsin. For the latter three states, joint application schemes for waterway activities have involved the respective state DNRs and the Corps. The Michigan joint application covers only Section 10 of the Rivers and Harbors Act, since Michigan already has primacy for Section 404 of the Clean Water Act on inland waters. In addition, Michigan and the Army Corps issue joint public notices. Washington state has developed an application process which incorporates seven permits relating to flood plain management permits, waterway construction permits, and similar permits directed to shoreline and waterway management, whether issued by the local, state, or federal government.

Julie Murphy asked how long was required for the development of these joint applications. Deady responded that in Washington state, the application was developed over a two-year period. A pilot project was then administered for one year.

Don Thomas asked if any of the states with joint permit applications were CZM states. Deady responded that Washington, Pennsylvania, Michigan, and Wisconsin are all states with federally approved Coastal Zone Management programs.

Tom Anderson asked whether legislation was required to implement the joint permit application process. Deady said that these efforts were implemented through memoranda of understanding.

Deady then proceeded to review the analysis of streamlining techniques applicable in Indiana which she and Lucas prepared. She said the analysis was prepared in response to requests by the Blue Ribbon Advisory Panel during its November meeting. The analysis also sought to use the structure suggested by the Panel during the last meeting.

Deady said that primacy of Section 404 could be achieved, but the process would take several years before completion and a legal analysis that Indiana had the needed resources and legal framework. Regarding Programmatic General Permits, she noted that there was greater flexibility and coverage could be extended beyond the Clean Water Act, but again Indiana would have to demonstrate the ability to implement a program at least as effective as what is currently implemented by the Army Corps. Mechanisms that might be more immediately effectuated include a liaison, joint permit applications, joint permits, and a regional office which can provide a broader range of services. She also reflected that a workgroup process could be initiated, and Deady briefly discussed the potential advantages of federal consistency under CZM.

Tom Anderson noted there was a focus upon providing better service to "customers." Anderson said he understood "customers" referred to permit applicants, but he was concerned there were other persons who legitimately participated in permitting processes. Lucas responded that in addressing permit streamlining issues, the intent was to provide better services to all interested persons. Obviously included were permit applicants, but neighbors and others who were concerned with the grant or denial of a permit must also be considered.

Theris asked whether CZM was required for primacy or to otherwise implement permit streamlining. Deady responded that primacy, federal consistency, and other techniques such as joint permits and joint permit applications were separate. Having a CZM program was not a prerequisite to having primacy, nor was primacy a prerequisite to a CZM program. "Federal consistency" was a process available only to CZM states. The states which have CZM have funding which can be applied to a streamlined permit effort, and several states have used their CZM funds in this manner.

Jim Hebenstreit reviewed the three examples of permitting processes prepared in response to the Panel's request. He said those examples were a straightforward permit issued to Amoco for ditch reconstruction near its Whiting refinery; a complex permit involving the Army Corps, IDNR, and IDEM for the construction of a mooring basin and the placement of a gaming boat in Lake Michigan near East Chicago; and, a permit process not yet given final approval

by the Army Corps for the placement of a marina by the Izaak Walton League, Miller Chapter, adjacent to Burns Portage Waterway.

Hebenstreit said the Izaak Walton League permit analysis was not yet complete, in part because the permit itself was still under review, but the Blue Ribbon Advisory Panel would, upon request, be given a subsequent report concerning the permit.

Hebenstreit noted that the Amoco permit was a good example of how permitting should and often did progress. Amoco was assisted because it qualified for a Corps "general permit," and the company also forwarded necessary correspondence to the interested state agencies in a timely fashion. Shiv Baloo reflected that his company had a good understanding of what would be required by the permitting process as it forwarded the needed correspondence.

The discussion focused primarily upon the East Chicago permit for the gaming boat. Noteworthy is that the DNR granted its permit, but a few days later the Army Corps denied its permit to East Chicago. The City was then required to reconfigure the facilities covered by the permit to the satisfaction of the Corps, and the DNR had to reconsider the application prior to issuing a letter of modification. A second delay occurred because of difficulties in communications between IDNR and IDEM concerning a sediment analysis.

Mayor Pastrick noted that conflicting personalities were sometimes an impediment to effective communications within and between agencies. A process which helped smooth interpersonal relationships between agency representatives would assist in a more efficient permit process.

Tom Anderson reflected that a streamlining effort should emphasize the need to minimize communication breakdowns between state agencies. A system should be put into place which would make unlikely the kinds of delays experienced in the East Chicago permit.

Bob Bilheimer observed that a key to dealing effectively with the permitting process was to understand the process. One reason Amoco had been successful with its permit was that Amoco knew what was required. Bilheimer reflected that his company also could address at least the typical problems which might arise in permitting, but smaller companies or individuals might not be as fortunate. While the East Chicago permit was extraordinary in many ways, one general principle was that applicants could be assisted by a process which was more understandable. A liaison might have helped with this permit and might help broadly with the permit application process.

Anderson asked about dewatering wells and the application of primacy to this regulatory process. Lucas responded that water withdrawal facilities capable of withdrawing 100,000 gallons daily are "registered" in Indiana, but persons are not

generally required to obtain a permit before performing withdrawals. A statutory program exists in Indiana to provide compensation to a person whose private well is damaged by a person capable of withdrawing 100,000 gallons daily, but the remedy is after-the-fact. Because the program has no federal counterpart, primacy is not really an issue. Generally speaking, water quantity issues are regulated solely on the state or local levels.

Barbara Waxman of NIRPC was then invited to provide some perspective on a Resolution of the Lake Michigan Marina Development Commission Encouraging Streamlined Regulatory Processes. Waxman explained the LMMDC's concerns with the permitting process, and reviewed its efforts to improve that process through communications with the Army Corps of Engineers. She said a meeting by the LMMDC with the Corps had, together with the efforts of the Blue Ribbon Advisory Panel, helped encourage the DNR-Corps meeting described previously by Jim Hebenstreit.

Waxman said the LMMDC passed a resolution during its December 27, 1996 meeting which provided a framework for how streamlining might occur. A copy of the resolution was distributed to the Panel, and Waxman reviewed several of its more important points. One of these was that an ad hoc committee should be established to include state agencies, elected officials, environmental organizations, shoreline businesses, industries, and other interested persons. State agencies would include IDEM, IDNR, the Water Pollution Control Board, the Natural Resources Commission, Indiana State Department of Health and the State Board of Health. The committee would explore and publish findings concerning the most effective means for streamlining regulatory functions for construction activities within Lake Michigan and its navigable tributaries. Steve Lucas then provided a discussion of models for implementation of streamlining in Indiana. He said that the models were formulated with Dawn Deady in an effort to respond to a Panel directive during the last meeting. The effort was set forth in some detail in the written materials, but he said only a few of the major thoughts would be summarized.

Lucas said the models were intended to flow from the analysis which Deady offered previously and were in many ways very similar to what was provided by the LMMDC resolution. One possible distinction was that the models suggested the creation of two workgroups, one including state agency participants and a second providing local government and citizen participation. He said that ideally these groups might work together at all times, but the amount of work needed to develop a working plan was thought to place too heavy a burden on local volunteers. Lucas said he thought that support for the process from the highest levels of state government was essential to its success. In addition to the personality concerns referenced previously by Mayor Pastrick, committed leadership would help minimize the potential for "turf battles" within and among agencies.

Recommendations by Panel for Future Actions and for Measuring the Success of these Actions

Following a short break, Andrea Gromeaux began the facilitated session. She asked the Panel to offer direction as to how it would effectuate the concept of permit streamlining. Several overall suggestions were offered:

Agencies need to pursue coordination.

An entity should coordinate with or report to the Lake Michigan Marina Development Commission concerning progress toward permit streamlining.

Agencies should communicate with the public.

Early in the permitting process, applicants should be provided with information regarding that process.

A single application form should be developed among multiple regulatory agencies.

There should be a single point of contact to provide permitting process information.

The use of technology should be promoted for assuring better communications among agencies.

Bi-directional communication was needed among the agencies and the applicant.

Improved communications were needed among regulatory agencies.

Databases should be shared by an agency with other agencies and with the public.

A joint permit application form should be drafted.

A joint permit application review process should be developed between agencies performing similar review functions.

Simplicity of a permit process should be pursued accounting for various levels of projects.

Focus should be directed to one regulatory area (such as joint permitting), and agencies should be invited to Blue Ribbon Advisory Panel meetings for discussions.

Public input has to be included in improving the process to protect public resources.

The Washington state example should be pursued as a model for providing improved communications among Indiana state agencies through the development of a memorandum of understanding.

CZM provides a mechanism to require federal agencies to communicate with a state: Indiana should investigate CZM federal consistency.

State resources for sharing data should be investigated.

Other states should be contacted concerning their approaches to computerizing data.

Interagency communications should be reviewed.

An applicant should be told "up-front" what conditions are.

Sediment guidelines should be set, or there should be a listing of parameters for testing agreed by all agencies.

Testing should be coordinated among agencies.

The Washington state permit should be looked to as an example for Indiana. The Panel then moved to a discussion of what entity might help carry forward the mission of the Blue Ribbon Advisory Panel. This discussion continued its pertinence to permit streamlining, but it was also directed to the breadth of other topics presented by the workgroup process.

One suggestion was that the Blue Ribbon Advisory Panel might continue to function as the mechanism to gauge the success of efforts by the DNR and other entities to implement prioritized actions. Concerns were expressed by several panel members that they had agreed to appointment on the basis the BRAP would meet on one or two occasions. Already, the panel was holding its third meeting and was yet discussing only the first of 15 general categories included in Northwest Indiana Public Work Group Reports: A Synthesis of Major Topics in the Lake Michigan Coastal Area (also sometimes called "Volume Three"). Bob Bilheimer suggested this concern might be addressed by having the Blue Ribbon Advisory Panel meet very infrequently in the future--perhaps on an annual basis. Similar concerns for permit streamlining as expressed by the Lake Michigan Marina Development Commission and by the Blue Ribbon Advisory Panel were noted. Barbara Waxman was asked whether she felt the LMMDC resolution was compatible with the proposal prepared for the BRAP by Deady and Lucas. She responded that the differences were far outweighed by similarities and could readily be accommodated. The suggestion was then made by Don Thomas that the LMMDC might provide the forum for pursuing and evaluating the success of permit streamlining efforts.

Chuck Siar expressed concerns that only permit streamlining had thus far been considered by the Blue Ribbon Advisory Panel. He said the work group process had offered more than 800 possible resolutions to the issues facing Northwest Indiana. Even the synthesis contained in Volume Three contained 15 general categories, of which the BRAP had examined only one. Siar said it was important that public concerns raised in the work group process be addressed and that the result not merely be another report "placed on a shelf."

J.B. Smith said Northwest Indiana needed a permanent entity which would be responsible for the numerous and changing issues along the entire length of Indiana's Lake Michigan shoreline. The Lake Michigan Marina Development Commission was something of a success story. Marinas had been developed and put into operation, but in addition the LMMDC had provided a forum where the shoreline's six mayors met regularly to discuss questions of mutual concern. He suggested that redefining the legal mission of the LMMDC, and providing it with sufficient funding for a working staff, could be invaluable to promoting the interests of the region.

Mike Bucko suggested the functions of the Blue Ribbon Advisory Panel might be merged into a subcommittee of a reconstituted LMMDC. Core membership from the BRAP could be included to help carry forward an institutional knowledge of

the work group process. This membership might form a key portion of the ad hoc committee anticipated in the LMMDC resolution.

Tom Anderson noted that there was a need to assure gender, cultural, and ethnic diversity. He referenced the language in the proposal by Deady and Lucas calling for diversity and reflected that the current BRAP did not fulfill this need. He said that any advisory panel to address work group issues, or to assist the LMMDC, must provide for greater diversity.

Bob Bilheimer offered that the Blue Ribbon Advisory Panel might recommend the stated purposes of the Lake Michigan Marina Development Commission be changed and its membership modified. With a broader mission, the LMMDC might become a Lake Michigan shoreline commission capable of reviewing the myriad of issues presented in the work group process. This commission need not necessarily serve in a regulatory capacity. He noted that the Indiana General Assembly was currently in session. The time for filing new bills had already passed. If any modification to the LMMDC were to require a legislative change, action would have to be taken very promptly.

Bill Theis said he did not wish to have the Blue Ribbon Advisory Panel dissolve. He said federal agencies might be unwilling to work with the state in permit streamlining efforts. If so, those efforts would not be successful. Instead, he urged that federal agencies be invited to appear before the BRAP and indicate whether they were willing to go forward.

Bilheimer responded that there was much which could be done toward permit streamlining even without federal participation. Action on a state level should not be made contingent upon federal action. Thomas indicated that federal participation would be helpful but agreed that state and local government could improve their communications and their public service without federal intervention. Smith noted, also, that the LMMDC had historically looked at issues more globally than merely what might be done to promote marina development. The Panel then determined to approach the Lake Michigan Marina Development Commission with a proposal that it serve as the forum for the work group issues, particularly as synthesized in Volume Three. The work group and BRAP process would be described. The Table of Contents for Volume Three could be provided to the LMMDC as a frame of reference to help it in making a decision. In addition, the LMMDC would be asked about an expanded role for addressing shoreline issue generally.

By consensus, Mike Bucko was made Chair of a subcommittee of the Blue Ribbon Advisory Panel to make this presentation to the LMMDC. Because timing was important, the presentation should be made as soon as possible and should include a draft Meeting Summary. Other persons included on the subcommittee were Bill Theis, Tom Anderson, Chuck Siar, and J.B. Smith. The subcommittee

would then report back to the BRAP as to the agreement or disagreement of the LMMDC with this proposal.

Julie Murphy emphasized that substantial preparation had already been undertaken by Steve Lucas and Dawn Deady. She said that it was important to include that effort in communications with the LMMDC and in any future efforts resulting from the work group process.

Theis urged that the membership of the Panel be informed of the importance of the next meeting. He observed that it was likely to be essential to decision-making.

Scheduling of Next Meeting

The Panel identified the following discussion items for the next meeting:

Mike Bucko and his subcommittee would discuss the results of its presentation to the Lake Michigan Marina Development Commission.

Closure would be brought to the discussion of permit streamlining.

A determination would be made of how to carry forward with the Mission of the Blue Ribbon Advisory Panel, including the possibility that the BRAP would be sunsetted and its functions merged with the LMMDC or another appropriate agency.

Agencies would be invited to appear for the next meeting and express interest or lack of interest in a streamlining initiative. Included among those invited would be the Indiana Department of Natural Resources, the Indiana Department of Environmental Management, the Indiana State Department of Health, the Lake Michigan Marina Development Commission, the National Park Service, the U.S. Fish and Wildlife Service, the Army Corps of Engineers, and the U.S. Environmental Protection Agency. An invitation would also be extended to Indiana State Representative, Earl L. Harris.

A specific date was not set for the meeting. Instead, the Panel asked that an effort be made to coordinate the meeting with one set for the NIRPC Environmental Management Policy Committee or for the Northwest Indiana Forum.

The meeting adjourned at approximately 1:20 p.m.